

THOMAS F. KEATING

IBLA 80-730

Decided March 30, 1981

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offer OR 23311 for failure to tender sufficient rental payment.

Affirmed as modified and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent. Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Reinstatements -- Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

APPEARANCES: Thomas F. Keating, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On December 19, 1979, Thomas F. Keating filed a noncompetitive oil and gas lease offer, OR 23311, with the Oregon State Office, Bureau of Land Management (BLM), for a parcel of Federal land consisting of 488.393 acres located in T. 1 N., R. 3 W., Willamette meridian, Oregon. The offer was accompanied by a tender of annual advance rental in the amount of \$367 plus a \$10 filing fee.

By decision dated June 3, 1980, BLM rejected the offer for failure to tender sufficient rental for the lands described in the offer. The decision correctly stated that the offer is deficient by more than 10 percent and does not meet requirements of regulation 43 CFR 3103.3-1 and 43 CFR 3130.2-1.

Keating did not offer to tender the deficient rental. Instead he filed this appeal June 20, 1980, taking issue with the Bureau's computations stating:

I do not feel that my advance rental of \$377.00 submitted with the offer was deficient. The USA owns an undivided 75% of 488.393 mineral acres as described in Exhibit A of the Oil and Gas lease offer. Paragraph 4a of Lease Terms provides that the rental should be in proportion of the U.S. ownership to the full fee simple interest.

* * * * *

Three-fourths of 488.393 would be 366.29 net acres at \$1.00 per net acre is \$367.00 rental plus a \$10.00 filing fee equals \$377.00 which was the amount submitted with the offer to lease dated December 14, 1979.

[1] We first note that an offer for a noncompetitive oil and gas lease is properly rejected where the offeror fails to tender the full first year's rental with his offer, and the amount of rental tendered is deficient by more than 10 percent of the proper amount due. Duncan Miller, 31 IBLA 371 (1977). Contrary to appellant's belief, he may not properly compute the required rental on a prorated basis where the United States owns only 75 percent of the mineral interest. The current regulation, 43 CFR 3130.2-1, specifically provides: "Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable at the same rate as provided in Subpart 3103 of this chapter for the full acreage in such lands." 41 FR 43149 (Sept. 30, 1976).

From our review of the lease offer, form 3110-3 (March 1978), we note that appellant could, in fact, have been misled by paragraph 4a of the "Lease Terms" which states:

(a) Rentals and royalties payable on account of each such tract shall be in the same proportion to the rentals

and royalties provided in section 2(d) hereof as the undivided fractional interest of the United States in the oil and gas underlying such tract is to the full fee simple interest.

Unfortunately, the text of this paragraph in the lease form is an incorrect statement of the current legal requirements for fractional interests. This paragraph conforms to the former requirements of the regulation before they were changed effective October 28, 1976, 41 FR 43149. Therefore, this form should either be amended or be recalled to reflect this regulatory change. However, appellant must still comply with the requirements of the current regulation to receive this lease.

In this case, the lease was for 488.39 acres and appellant was required to tender \$1 per acre or fraction thereof on the total acreage, amounting to \$489. Since appellant tendered only \$367 toward the rental, he was more than 10 percent deficient, contrary to regulation 43 CFR 3103.3-1, and the lease offer was properly rejected by the State Office.

[2] In similar circumstances we have held that where such a deficiency exists in an "over-the-counter" offer, the deficiency may be cured by payment of the balance of the rental in appropriate circumstances. In George S. Swan, 39 IBLA 47, 48 (1979), we specifically emphasized that at least some other BLM offices have made it a practice to call upon the offeror to remit the deficient rental where the offer has been filed "over-the-counter" (as distinguished from a "simultaneous" offer). If the balance is paid, the offer earns priority from the date the deficiency is cured. See Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978); Tipperary Oil and Gas Corp., 35 IBLA 120 (1978); Dean W. Rowell, 33 IBLA 30 (1977). Unlike a simultaneously-filed offer, an over-the-counter offer which has been rejected for some deficiency may, in appropriate circumstances, be reinstated with priority from the date the deficiency was corrected. Ballard E. Spencer Trust, Inc., 18 IBLA 25, 27-28 n.1 (1974), aff'd, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

As stated above, appellant apparently relied on a lease offer form in use by BLM, which form incorrectly states that lease rental may be apportioned for a fractional interest owned by the United States. In view of such reliance and as the offer is "over-the-counter," we find the deficiency herein may be cured in this instance by payment of the balance of the rental due. Accordingly, in the absence of intervening third party interest, if the correct rental is paid, the lease offer may be reinstated with priority from the date of full payment. Appellant is given 30 days from the date of this decision to submit the balance of the rental due.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified, and the case is remanded to the Oregon State Office, BLM, for further action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

